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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,046	01/16/2001	Robert Wessel	RWS-14863WO	2987

7590 09/24/2003

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EXAMINER

MCANULTY, TIMOTHY P

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/744,046	WESSEL, ROBERT
	Examiner Timothy P McAnulty	Art Unit 3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 July 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 and 3-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 and 3-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

    1. Certified copies of the priority documents have been received.

    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_ .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arbeiter in view of Seidler.

Arbeiter in figures 1, 3-5, and 7 discloses a bicycle shift mechanism comprising a housing 2 having an opening 13 configured to receive a control cable 8 having a first end and a second end including a nipple 10 but does not disclose a closure member made from an elastomeric material connected to the housing via a holding member, said closure member having an extension, a thickened portion, a molded recess, an upper lip and a lower lip wherein said upper lip and said lower lip engage an edge of said opening. However, Seidler teaches in figures 1 and 3 a closure member 12 made of elastic material having a thickened extension 20 extending into a housing 14, a hinge 18; an upper lip 26 which rests over the edge of an installation opening; and a lower lip 29 sliding under the edge of the installation opening.

The reference combination discloses the basic apparatus as previously cited but the limitation as to the first end of the cable being inserted into the installation opening, and fed through the housing, until the second end of the cable is received through said opening does not further limit the apparatus as claimed. Even though product-by-process claims are limited and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. See MPEP §2113.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arbeiter in view of Seidler as applied to claims 1, 3-5, and 7 and further in view of Robbins et al.

The reference combination previously set forth discloses the basic apparatus as previously cited but does not disclose the lower lip at a point furthest away from the extension. However, Robbins et al. teaches in figures 1 and 3 a hinged plastic cover including a lower lip that slides under the edge of an installation opening wherein the lower lip 138 is at a point furthest away from an extension 114. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Arbeiter in view of the teachings of Robbins et al. to position the lower lip at a point furthest away from the extension to provide for a secure latch and tight seal around all edges of the installation opening.

*Response to Arguments*

4. Applicant's arguments filed 18 July 2003 have been fully considered but they are not persuasive. The cable 8 of Arbeiter can be inserted into the installation opening 13 by way of a cable first end not having a nipple and fed through the installation opening until a cable second end having a nipple 10 is received through the opening.

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9326 for regular communications and 703.872.9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

  
DAVID A. BUCCI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3800  
9/22/03

  
tpm  
September 19, 2003